

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

---

In re Application of:	Haraldur THORKELSSON <i>et al.</i>	Confirmation No.:	3542
Application No.:	10/579,610	Examiner:	Bhatia, Ajay M.
Filed:	May 17, 2006	Group Art Unit:	2445

---

For: WIRELESS E-MAIL SYSTEM AND METHOD FOR USING SAME

Commissioner for Patents  
Alexandria, VA 22313-1450

**REPLY BRIEF**

Dear Sir:

This Reply Brief is submitted in response to the Examiner's Answer mailed June 10, 2011.

**I. STATUS OF THE CLAIMS**

Claims 1 through 34 are pending in this Application. Claims 35 through 37 have been canceled. Claims 1 through 34 have been previously presented. No claims are original. Claims 1 through 34 were finally rejected in an Office Action dated December 23, 2010. It is from the final rejection of claims 1 through 34 on December 23, 2010, that this Appeal is taken.

**II. GROUNDS OF REJECTION TO BE REVIEWED**

A. Claims 1 through 17, 20 through 27, and 30 through 34 were rejected under 35 U.S.C. §103(a) for obviousness predicated upon Munarriz et al. ("Munarriz") (US 2002/0156871) in view of Kadyk et al. ("Kadyk") (US 6,895,425).

B. Claims 18 and 28 were rejected under 35 U.S.C. §103(a) for obviousness predicated upon Munarriz et al. (“Munarriz”) (US 2002/0156871) and Kadyk et al. (“Kadyk”) (US 6,895,425) in view of Wener et al. (“Wener”) (US 2006/0085429).

C. Claims 19 and 29 were rejected under 35 U.S.C. §103(a) for obviousness predicated upon Munarriz et al. (“Munarriz”) (US 2002/0156871) and Kadyk et al. (“Kadyk”) (US 6,895,425) in view of Gorty et al. (“Gorty”) (US 2005/0171996).

### **III. ARGUMENT**

Initially, Appellants maintain and incorporate herein the arguments advanced in the Appeal Brief filed May 23, 2011. The arguments presented *infra* address certain new assertions presented by the Examiner in the Answer.

At page 23 of the Answer, responsive to Appellants’ argument that Kadyk does not teach a “plurality of transactions taking place between the gateway and the server,” the Examiner again cites col. 3, line 60 through col. 4, line 5 of Kadyk. However, reference to that cited portion of Kadyk reveals only a general description of computer-executable instructions. Such a general description is clearly not suggestive of a plurality of transactions between a gateway and a server, as claimed.

At pages 23 to 24 of the Answer, the Examiner asserted that Appellants argued that Kadyk’s disclosure of an expert proxy server is not the disclosure of a “proxy.” Respectfully, Appellants never argued that the expert proxy server of Kadyk is not a “proxy.” Rather, what Appellants argued, and continue to assert, is that Kadyk describes only a network wherein wireless devices communicate with an expert proxy server 130 over a wireless network 120. Kadyk does not describe or suggest a “gateway,” as claimed. That is, nowhere in Kadyk is there

disclosed a “gateway,” such that a client transmits a single self-contained request to the gateway via the wireless network to retrieve a set of e-mail related information from the server, with the gateway retrieving at least the e-mail related information from the server via the broadband network, much less that these functions are achieved by “using a **plurality of transactions** taking place between the gateway and the server,” as claimed.

At page 23 of the Answer, the Examiner asserted that it is Munarriz, and not, Kadyk, that is relied upon for a teaching of the “gateway.” Appellants maintain that the mere teaching of a “gateway” by Munarriz and the mere suggestion of a “proxy” 130 in communication with wireless devices in Kadyk, *per se*, does not teach or suggest, in any way, shape, or form, how or why such a gateway and such a proxy, from two different types of systems (one a messaging protocol and the other an agent for wireless devices) should be combined to result in the claimed invention. Thus, for example, there would have been no suggestion, from the evidence of record, that messaging protocol of Munarriz should be modified by adding a proxy, such as expert proxy server 30 of Kadyk in a manner as to result in a plurality of transactions taking place between the gateway of Munarriz and the expert proxy server of Kadyk.

Inconsistently, at the bottom of page 23 to the top of page 24 of the Answer, the Examiner asserted that the expert proxy server in Kadyk is a gateway, after asserting at the beginning of the same paragraph that Munarriz is relied upon for the teaching of a “gateway.” Thus, the Examiner is attempting to reconstruct the claimed subject matter from a combination of references that in no way can offer such a result. Even if, merely for argument’s sake, and not by way of admission, the expert proxy server of Kadyk could be considered a “gateway,” then the proposed combination would lack the teaching of the claimed “server.” Therefore, the Examiner’s proposed combination does not, and cannot, provide for the claim feature of “wherein

a broadband network **interconnects said gateway and said server**; wherein when said client transmits a single self-contained request to said gateway via said wireless network to **retrieve a set of e-mail related information from said server, said gateway retrieves at least said e-mail related information from said server via said broadband network using a plurality of transactions taking place between the gateway and the server**, compiles said retrieved information into a single self contained response and transmits said single response via said wireless network to said communication client” (Emphasis Added).

At page 24 of the Answer, the Examiner asserted that motivation exists for making the proposed combination because the “off loading the combination of sequence of executable instruction at the expert proxy server reduced the processing power required by the phone device of Munarriz” and “this allows for reduction in the requirements of the processor footprint and heat dissipation requirement allowing for a ‘simplified and smaller device.’” Appellants respectfully disagree.

Respectfully, the Examiner’s rationale for the combination has no basis in fact and could only have been arrived at through impermissible hindsight. There is no evidence that off loading a sequence of executable instructions at the expert proxy server of Kadyk would have any utility in the messaging protocol system of Munarriz. Moreover, there is no evidence of record indicative of where the expert server proxy of Kadyk would be placed in the system of Munarriz, even if there were some suggestion for the modification, which there is not. Still further, even if the off loading of the executable instructions at the expert proxy server in Kadyk would reduce the required processing power required in Kadyk, there is no evidence of record that the placement of such an expert proxy server in Munarriz would have the same effect on the messaging protocol system of Munarriz or that such a placement would result in a retrieval of a

set of e-mail related information from the expert proxy server, and a retrieval by a gateway of at least the e-mail related information from the expert proxy server via a broadband network using a plurality of transactions taking place between the gateway and the expert proxy server. The Examiner's asserted rationale for making the proposed combination is simply not tantamount to the "articulated reasoning with some rational underpinnings" required by the U.S. Supreme Court, *KSR Int'l Co. v. Teleflex, Inc.*, 127 S. Ct. 1727, 82 USPQ2d 1385 (2007).

#### **IV. CONCLUSION AND PRAYER FOR RELIEF**

Appellants, therefore, request the Honorable Board to reverse each of the Examiner's rejections.

Respectfully Submitted,

DITTHAVONG MORI & STEINER, P.C.

August 10, 2011

Date

/Phouphanomketh Ditthavong/

Phouphanomketh Ditthavong  
Attorney/Agent for Appellant(s)  
Reg. No. 44658

Errol A. Krass

Attorney/Agent for Appellant(s)  
Reg. No. 60090

918 Prince Street  
Alexandria, VA 22314  
Tel. (703) 519-9952  
Fax (703) 519-9958